

# **EXHIBIT**

# **11**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----  
5 TRAVELERS CASUALTY AND SURETY COMPANY as  
6 Administrator for RELIANCE INSURANCE  
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX  
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX  
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)  
16 -----

17 June 10, 2008

18 10:13 a.m.

19 DEPOSITION of RAY LEU, taken by  
20 Plaintiff, pursuant to Notice, held at the  
21 offices of HOLLAND & KNIGHT LLP, 195  
22 Broadway, New York, New York before Wayne  
23 Hock, a Notary Public of the State of New  
24 York.  
25

R. Leu

A. Yes.

MR. SIMON: Objection to form.

Q. Yes?

A. Yes.

Q. Did TDX inspect the floor leveling process at the project for conformance to the contract documents?

A. Yes.

Q. Who did that from TDX?

A. Tony Mockler, Paul Citro.

Q. Just those two folks?

A. Yeah, they were our interior superintendents, assistant superintendents.

Q. And then the actual terrazzo installation, did someone from TDX inspect that for conformance with the contract documents?

A. Yes.

Q. And who did that?

A. The same two individuals, Tony Mockler and Paul Citro.

Q. Was it TDX's responsibility to advise the prime contractor if correction

1 R. Leu

2 work was required?

3 A. Yes.

4 Q. And who had that from TDX?

5 MR. SHAPIRO: Objection.

6 You can answer.

7 A. That would be Tony Mockler, Paul  
8 Citro, myself if I was made aware of it.

9 Q. Did TDX notify Trataros as to  
10 corrective work with respect to the  
11 terrazzo installation?

12 A. Yes.

13 Q. And what about notifying  
14 Trataros about corrective work with  
15 respect to floor leveling?

16 A. Yes.

17 Q. Do you know what the corrective  
18 work was with respect to the floor  
19 leveling?

20 A. There was areas that were  
21 removed and replaced.

22 Q. This is before terrazzo is  
23 installed over the floor leveling?

24 A. Yes.

25 Q. Did Trataros remove and replace

1 R. Leu

2 those areas of the floor leveling?

3 A. Yes.

4 Q. And with respect to the terrazzo  
5 installation, the corrective work that was  
6 required, was that done as well?

7 A. Yes.

8 Q. And what was the corrective work  
9 that was required?

10 A. Some of the terrazzo was  
11 replaced, there was some remedial work  
12 that was done, epoxy injections,  
13 installing besides epoxy injections and/or  
14 fastening down the terrazzo by mechanical  
15 means.

16 Q. With respect to the corrective  
17 work on the floor leveling, was that  
18 because of what they termed contamination  
19 issues?

20 A. Yes.

21 Q. And what was the contamination  
22 issue?

23 A. I don't know what was the actual  
24 substance that was contaminating it. We  
25 had Dayton Superior out there to take a

1 R. Leu

2 look at the areas that were -- that were  
3 deficient and they made a recommendation  
4 to remove it and it was removed.

5 Q. And that was the conclusion at  
6 the time, was contamination; correct?

7 A. By Dayton, yes.

8 Q. Did TDX agree with that  
9 conclusion?

10 A. Yes.

11 MS. BONACCI: We can do our lunch  
12 break now. It's now 1:00.

13 MR. SHAPIRO: As close to two as  
14 we can get?

15 MS. BONACCI: Yes.

16 (Lunch recess taken at 12:58  
17 p.m.)

18 (Whereupon Ms. Young left the  
19 proceedings)

20 (Whereupon Mr. DeFilippis  
21 entered the proceedings)

1 R. Leu

2 recommended to DASNY by TDX that this  
3 should be done?

4 A. Yes.

5 Q. And how did TDX verify that the  
6 extra work was being performed?

7 MR. SHAPIRO: Objection.

8 You can answer.

9 A. There was time and material  
10 tickets that were produced.

11 Q. What would happen, TDX would  
12 review the tickets?

13 A. Yes.

14 Q. We're finished with that  
15 exhibit, too.

16 Did TDX prepare exception  
17 reports regarding the preparation of the  
18 floor slabs to receive the finished  
19 flooring?

20 A. No.

21 Q. So you're not aware of any  
22 exception reports?

23 A. I'm not aware of any exception  
24 reports.

25 Q. Relating to the slabs, the

1 R. Leu

2 concrete slabs?

3 A. Prior to installation of the  
4 floor leveling.

5 Q. And did TDX prepare an exception  
6 report regarding the floor leveling  
7 process of the project?

8 MR. SHAPIRO: Objection.

9 You can answer.

10 A. No, we noticed -- we informed  
11 Trataros that there was a problem with  
12 some of the underlayment back in early  
13 part of '01 and they came down, took a  
14 look at it, and gave us a recommendation.

15 Q. Was there an exception report  
16 that was ever prepared regarding that  
17 situation?

18 MR. SHAPIRO: Objection.

19 You can answer.

20 A. I guess a memo to Trataros.

21 Q. And did TDX ever prepare any  
22 exception reports regarding the terrazzo  
23 installation at the project?

24 A. I'm not aware of any.

25 Q. Did TDX maintain a log of noted



1 R. Leu

2 floor leveling?

3 MR. SHAPIRO: Objection.

4 You can answer.

5 A. I do not know what the curing  
6 time. I'd have to take a look at the  
7 product data sheets.

8 Q. Mr. Leu, I'm going to show you  
9 what's been marked as T8, which is the  
10 Conflow product data sheet. I'm going to  
11 ask you if you've seen that document  
12 before.

13 A. Yes.

14 Q. Did you see it during the  
15 project time frame?

16 A. Yes.

17 Q. Based on this product data  
18 sheet, is Conflow's compressive strength  
19 consistent with the requirements of the  
20 specification for cementitious floor  
21 leveling? And that's the document that  
22 should be in front of you.

23 A. (Reviewing).

24 MR. SCHRECKINGER: T7?

25 MS. BONACCI: Yes, T7.

1 R. Leu

2 A. Can you repeat that question?

3 MS. BONACCI: Wayne, can you read  
4 it back.

5 (Whereupon the requested portion  
6 was read back by the reporter)

7 A. Yes.

8 Q. And with respect to bond  
9 strength, is it consistent with the  
10 requirements of the specification at T7?

11 MR. SHAPIRO: Objection.

12 You can answer.

13 A. Yes.

14 Q. Now I'm going to show you what's  
15 been marked as T38. It's a material  
16 safety data sheet.

17 Can you tell me if you've seen  
18 that document before?

19 A. Yes.

20 Q. Can you tell me if the listed  
21 ingredients are consistent with the  
22 composition of the specified underlayment  
23 in T7, the cementitious floor leveling?

24 MS. SMITH: Can I hear that  
25 question again, please.

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of June, 2008.

Wayne Hock

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

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13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)

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18 10:09 a.m.

19 CONTINUED DEPOSITION of RAY LEU,  
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23 before Wayne Hock, a Notary Public of the  
24 State of New York.  
25

R. Leu

Senior?

A. No, that's Jim Jones, Junior.

Q. So you and Jim Jones, Junior on behalf of TDX negotiated this change order?

MR. SHAPIRO: Objection.

A. Along with Antonio and DASNY and Trataros.

Q. My question is just on behalf of TDX because you didn't negotiate on behalf of the other parties, you would only do that on behalf of TDX; correct?

MR. SHAPIRO: Objection.

Q. Based on GC2-028, is Conflow now the specified material for the floor leveling?

MR. SHAPIRO: Objection.

You can answer.

MR. DENNIS: Join.

A. (Reviewing).

Yes.

Q. The change order pertains only to floors three to fourteen in the building; is that correct?

1 R. Leu

2 ever issued for repair work in connection  
3 with contamination.

4 MR. SHAPIRO: Objection. If you  
5 recall.

6 A. We issued a change order for  
7 damage to terrazzo due to damages caused  
8 by vandalism, broken terrazzo base, damage  
9 by unidentified trades, but not  
10 contamination.

11 Q. Was there a situation at the  
12 project where the manufacturer came out to  
13 look at the product and determined that  
14 there was contamination?

15 A. Yes.

16 Q. And that related to Conflow?

17 A. Yes.

18 Q. Did that contamination create  
19 any damage or need for any repair in  
20 connection with the Conflow?

21 A. Yes.

22 Q. So contamination can require  
23 repair work, contamination the likes of  
24 what Bartec is referring to in the  
25 April 9, 2001 letter?

1 R. Leu

2 MR. SHAPIRO: Objection.

3 MR. FROESSEL: Objection.

4 MR. SHAPIRO: You can answer.

5 A. We are not paid for a change  
6 order to repair the Conflow for that  
7 contamination or the flakiness of the  
8 Conflow.

9 Q. You did not do it via change  
10 order but you required repairs because of  
11 the contamination; correct?

12 A. It was repaired.

13 Q. Who repaired it?

14 A. Trataros/Bartec.

15 Q. And who directed that the repair  
16 occur?

17 A. It was directed that -- we  
18 directed them to make the repair along  
19 with Dayton Superior.

20 Q. You directed, meaning TDX, them  
21 to make a repair?

22 A. Yes.

23 Q. Dayton Superior wouldn't have  
24 the ability to direct them to do work on  
25 the project.

1 R. Leu

2 Conflow as well as the terrazzo; no?

3 MR. FROESSEL: Objection.

4 A. No, to the Conflow.

5 Q. How long a time period did TDX  
6 wait before permitting contractors to work  
7 on the underlayment once it was placed?

8 MR. SHAPIRO: Objection.

9 You can answer.

10 MS. SMITH: What's the question?

11 I didn't hear it.

12 MS. BONACCI: Wayne, can you read  
13 it back.

14 (Whereupon the requested portion  
15 was read back by the reporter)

16 MS. SMITH: Thank you.

17 A. I don't remember the specific  
18 time frame because, in general, Crocetti  
19 followed right behind Bartec with their  
20 work.

21 Q. When the upper floors of the  
22 school opened in September, '01, do you  
23 have knowledge as to whether there were  
24 any restrictions on those floors as to  
25 areas that the students could not use



1 R. Leu

2 because of the terrazzo flooring  
3 situation?

4 MR. SHAPIRO: Objection.

5 You can answer.

6 A. No, there were no restrictions.

7 Q. When the school opened for use  
8 in September, '01, how many levels of the  
9 building were being used by the students?

10 A. Fourteen levels.

11 Q. And that would be the ground  
12 floor through to fourteen?

13 A. Yes.

14 Q. Do you have any knowledge that  
15 at that time any levels of the building  
16 were not building used due to the terrazzo  
17 flooring?

18 MR. SHAPIRO: Objection. Asked  
19 and answered.

20 You can answer.

21 A. No.

22 Q. In the year 2001, did DASNY  
23 direct TDX to take any remedial actions  
24 regarding terrazzo?

25 MR. FROESSEL: Objection.

R. Leu

Superior?

A. No, I did not.

Q. Do you know if anybody --

MS. SMITH: Strike that.

Q. Are you able to identify who companies met with Dayton Superior?

A. No, I do not know.

Q. Do you know whether TDX met with Dayton Superior?

A. No, I do not know because there was no minutes taken of the meeting or a sign-in sheet.

Q. Do you know who would have that information?

A. Possibly Trataros.

Q. Is there anybody at TDX that would know that information?

A. I do not know.

Q. Now, I understood your testimony to say that there was a problem with delamination and Conflow in the spring of 2000 or 2001?

A. 2001.

Q. And what was the --

1 R. Leu

2 MS. SMITH: Strike that.

3 Q. How did you know that there was  
4 a problem with the Conflow?

5 A. Because it was brought to our  
6 attention by our field superintendent, one  
7 of our field superintendents, and Mr.  
8 McCullough wrote a letter to Trataros.

9 Q. What was it about the field  
10 conditions that caused your superintendent  
11 to say that there was a problem  
12 specifically with the Conflow?

13 A. They noticed some flakiness of  
14 the Conflow.

15 Q. And this was prior to the  
16 terrazzo floor being put down?

17 A. In that particular area.

18 Q. And what particular area are we  
19 talking about?

20 A. Again, I'd have to get that  
21 memorandum out to see what area was --  
22 that we wrote about, that particular  
23 memorandum.

24 Q. Was there any --

25 MS. SMITH: Strike that.

1 R. Leu

2 Q. Do you know if there was any  
3 analysis taken of the Conflow at that  
4 time?

5 A. I do not know if there was any  
6 analysis taken.

7 Q. And was there any other time  
8 that a problem regarding the Conflow, as  
9 it was originally brought to your  
10 attention or TDX's attention back in the  
11 spring of 2001, did that ever occur again?

12 MR. SHAPIRO: Objection.

13 You can answer.

14 A. Not that I'm aware of.

15 Q. Do you know if any pictures were  
16 taken during this inspection with Dayton?

17 A. No, I'm not aware of any.

18 Q. Now, as I also understand your  
19 testimony, as you sit here today you're  
20 not able to tell me what areas that there  
21 was a delamination or problem with the  
22 terrazzo and where Conflow was used; is  
23 that correct?

24 A. That's correct.

25 Q. Are there any areas that

1 R. Leu

2 by the college into site B is behind  
3 schedule and that's what I mean by the  
4 project is behind schedule.

5 Q. And the completion date is not  
6 going to be met if things continue to  
7 proceed in the manner which led up to it  
8 being behind schedule; correct?

9 MR. SHAPIRO: Objection.

10 You can answer if you  
11 understand.

12 MS. SMITH: No speaking  
13 objections, please.

14 A. I'm not quite sure I understood  
15 the question.

16 Q. Of course.

17 What was the completion date?

18 A. The completion date is September  
19 of '01 for the college to move in.

20 Q. And was the college open on  
21 September of 2001?

22 A. Yes.

23 Q. So in looking at Exhibit T40,  
24 what did TDX do in order to ensure that  
25 the completion date would be met?

1 R. Leu

2 A. We put contractors, certain  
3 contractors on extended work days.

4 Q. Anything else?

5 A. We expedited the work of the  
6 underlayment for the terrazzo.

7 Q. When you say that you expedited  
8 the work for the underlayment of terrazzo,  
9 how do you expedite the work for the  
10 underlayment of terrazzo?

11 A. In some instances, we changed  
12 the material to be used.

13 Q. Was the September, 2001 the  
14 original completion date?

15 A. No, it wasn't.

16 Q. What was the original completion  
17 date?

18 A. I don't recall.

19 Q. Was it before or after September  
20 of 2001?

21 A. Before.

22 Q. And in expediting the work for  
23 the underlayment of terrazzo, did you also  
24 put pressure on your contractors in order  
25 to speed up the job?

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 16<sup>th</sup> day of June, 2008.

Wayne Hock

VERITEXT REPORTING COMPANY

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14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)  
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17 June 20, 2008

18 10:08 a.m.

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24 State of New York.  
25



1 R. Leu

2 with relation to the underlayment or  
3 installation of the terrazzo flooring  
4 prior to July, 2000?

5 MR. FROESSEL: Objection.

6 You can answer.

7 A. No.

8 Q. And does your testimony apply to  
9 levels B1, B2, and B3 as well as the other  
10 levels of the Baruch College project?

11 MR. FROESSEL: Objection.

12 You can answer.

13 A. Yes.

14 MS. RAICUS: Thank you. No more  
15 questions.

16 MR. MILLER: I'd like to have  
17 these marked as T71 and T72. T71 is  
18 going to be documents with Bates  
19 numbers CR 1184 through CR 1188 and  
20 the next one's going to be T72. It's  
21 going to be CR 0920 through CR 0952.

22 (Whereupon, a facsimile dated  
23 March 8, 2001 was marked Exhibit T71  
24 for identification.)

25 (Whereupon, a letter dated

R. Leu

August 28, 2003 was marked Exhibit T72  
for identification.)

EXAMINATION BY

MR. MILLER:

Q. If you look at page CR 1187,  
last time we were together you were asked  
some questions about notification of  
Trataros in the spring of 2001 about  
problems with delamination and Conflow.  
We didn't have the benefit of having that  
notification with us at the time.

My question is going to be  
whether or not the letter dated  
February 28, 2001 that appears at Bates  
pages CR 1187 and 188 is that notification  
referred to in your prior testimony.

MR. FROESSEL: Objection to the  
form.

You can answer.

A. Yes.

Q. Let me direct your attention to  
T72.

I believe your prior testimony  
had also been -- do you want to take a

1 R. Leu

2 we're pouring one inch thick, I'd like to  
3 know what is the added dead weight to see  
4 if there's any structural concerns. This  
5 is the conversation that I had with Dan  
6 from Conspec.

7 Q. And was it a long conversation?

8 A. It was a fairly short  
9 conversation.

10 Q. When you were done with that  
11 conversation, you were comfortable with  
12 how you were going to proceed in  
13 connection with the project?

14 A. Yes.

15 Q. Do you have knowledge if KPF had  
16 contacted the manufacturer at any point in  
17 time in connection with the Baruch  
18 project?

19 MR. FROESSEL: Objection to the  
20 form.

21 A. I do not know.

22 Q. There's an Exhibit T71 that got  
23 marked today by Mr. Miller. I'm going to  
24 show it to you so you can take another  
25 look through it, but I just have one

1 R. Leu

2 question.

3 Mr. Miller was showing you this  
4 document and asking you about a time frame  
5 of notifying Trataros regarding a problem  
6 with an aspect of the terrazzo.

7 At this point in time -- my  
8 question to you is very simple.

9 This problem was concluded this  
10 was a contamination issue. Was it not  
11 rectified?

12 A. Yes.

13 Q. So it was fixed, remedied to  
14 TDX's satisfaction at that point in time?

15 A. Yes.

16 Q. Mr. Platek was asking you some  
17 questions regarding contractors walking on  
18 the terrazzo and the underlayment.

19 Can you tell me, were other  
20 contractors scheduled to follow behind the  
21 floor finishes?

22 A. No. There may have been some  
23 work that they had not finished but it  
24 definitely was not scheduled to be done  
25 afterwards. Various trades, including

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That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

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